IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 26, 2008 Session

FRED MARSHALL
v.
JOHN KEITH JACKSON and CHARLES DAVID JONES

Appeal from the Circuit Court for Rutherford County
No. 49825 Robert E. Corlew, III, Chancellor

No. M2007-01764-COA-R3-CV - Filed December 8, 2008

This appeal involves piercing the corporate veil. The plaintiff owned a gasoline service station. He entered into an agreement with a corporation to supply his gasoline. The supplier corporation breached the contract and the plaintiff retailer was awarded damages. Subsequently, both the supplier and its parent company became insolvent. The plaintiff retailer now seeks to pierce the corporate veils of both the supplier corporation and its parent corporation in order to enforce his judgment against the defendant shareholders of the parent corporation. After a bench trial, the trial court found the proof sufficient to allow the retailer to pierce the corporate veil of the subsidiary supplier corporation, but not that of the parent corporation. Accordingly, it held for the defendant shareholders of the parent corporation. The plaintiff retailer now appeals, arguing that the trial court erred in finding that the shareholders of the parent corporation could not be held liable for the supplier corporation's debt to the retailer. We affirm, finding that the evidence does not preponderate against the trial court's decision.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

HOLLY M. KIRBY, J., delivered the opinion of the Court, in which ALAN E. HIGHERS, P.J., W.S., and DAVID R. FARMER, J., joined.

John H. Baker III, Murfreesboro, Tennessee, for the appellant, Fred Marshall

Christina B. Jackson, Murfreesboro, Tennessee, for the appellees, John Keith Jackson and Charles David Jones

OPINION

FACTS AND PROCEEDINGS BELOW

This case demonstrates the difficulties in collecting a judgment. In 1946, Mid-State Oils, Inc. ("Mid-State") was formed for the purpose of supplying gasoline and related petroleum products to gasoline retailers. Its principal place of business was in Shelbyville, Tennessee. Mid-State was incorporated as a closely-held Tennessee corporation, with four shareholders. Two of the original shareholders were Rose and Bailey Jackson. In the 1960s, their son, Defendant/Appellee John Keith Jackson ("Jackson"), became a Mid-State shareholder and officer. Except for a brief period in the early 1990s, Jackson has remained a shareholder and director for Mid-State since he was originally brought on board in the 1960s.

In December 1985, Jackson and Defendant/Appellee Charles David Jones ("Jones"), among others, incorporated another company, Jackson & Jones Oils, Inc. ("J & J"). Like Mid-State, J & J was also in the business of supplying gasoline to retailers. J & J's principal place of business was in Murfreesboro, Tennessee.

Jackson and Jones were both on J & J's original board of directors. At the first board meeting, Jackson was elected President of J & J, and Jones was elected Vice-President. Jackson's son, Dennis Keith Jackson, was elected Secretary and Treasurer. All three men remained on J & J's board as late as May 31, 1988.

Plaintiff/Appellant Fred Marshall ("Marshall") owned and operated a gasoline service station at his Handy Mart in Murfreesboro. In 1989, he entered into a gasoline supply contract with J & J, under which J & J had exclusive rights to supply gasoline to Marshall on a consignment basis. Not long after that, a dispute arose, with Marshall alleging that J & J had breached the consignment agreement by unilaterally dictating the price that Marshall would charge for gasoline. As a result, in 1993, Marshall filed a lawsuit against J & J in the Circuit Court for Rutherford County. After a bench trial, the trial court ruled in favor of J & J in September 1996. Marshall appealed. In 1999, the Court of Appeals reversed the Circuit Court's decision in part. ***See Marshall v. Jackson & Jones Oils, Inc.***, 20 S.W.3d 678 (Tenn. Ct. App. 1999). The intermediate appellate court found that J & J had breached the consignment agreement, and remanded the case to the trial court for a determination of Marshall's damages. ***Id.*** at 684. The Tennessee Supreme Court denied permission to appeal on June 19, 2000.

On remand to the trial court, J & J did not oppose Marshall's motion for summary judgment on the issue of the appropriate amount of damages. From the record, it appears that counsel for J & J did not even appear at the hearing on Marshall's summary judgment motion. In an order dated November 15, 2002, the trial court awarded damages to Marshall, against J & J, in the amount of $120,519.

Meanwhile, in 1995, while Marshall's suit against J & J was pending in the trial court, Mid-State purchased all of the outstanding shares of J & J. Thus, J & J became a wholly-owned subsidiary of Mid-State. Between February and April of 2000, after the Court of Appeals' decision in Marshall's favor, J & J discontinued its operations. Between March and November of 2000, two years before the trial court granted Marshall's summary judgment motion on the issue of the amount of Marshall's damages, J & J liquidated its assets. J & J sold all of its equipment to a third entity, D & D Oil Company, Inc. ("D & D"), in exchange for cash and two promissory notes with principal amounts of $20,000 and $93,000.[1] Later, Jones became the president of J & J. On August 8, 2001, Jones, as president of J & J, caused these two promissory notes to be assigned and transferred to Mid-State. On the same date, J & J also transferred the contents of a small bank account to Mid-State. The value of the money in this bank account plus the income from the notes totaled approximately $75,000, and represented the only remaining assets of J & J.

Thus, in 1999, when the Court of Appeals issued its opinion directing the trial court to enter a judgment in favor of Marshall, J & J was still a going concern with assets. By the time that the trial court, on remand, entered the judgment in favor of Marshall in the amount of $120,000, J & J had ceased its operations and had no assets.

On February 10, 2003, the trial court issued an execution and garnishment in favor of Marshall, which named D & D as the garnishee. The property garnished was the income from the promissory notes made in favor of J & J. However, after the garnishment was issued, Marshall received only two payments on the promissory notes.[2]

In April or May of 2003, J & J and Marshall engaged in settlement discussions. To settle Marshall's judgment, J & J offered Marshall the income from the two notes from D & D, a value of approximately $67,000. Marshall rejected J & J's offer, and made a counter-offer of $75,000. Marshall's counter-offer was rejected on April 19, 2003.[3] The record does not refer to any further negotiations.

Meanwhile, as J & J was liquidating its assets and winding up its affairs, Mid-State was doing the same. Like J & J, Mid-State had suffered several consecutive years of net losses. In 2000, Mid-State sold some of its equipment and inventory to D & D. On January 31, 2002, Mid-State sold real estate, equipment, and inventory at a public auction, netting proceeds of $45,000. While Mid-State's assets were being liquidated, its president, Jones, contacted Mid-State's creditors to address Mid-State's outstanding obligations. The record does not indicate that Jones contacted Marshall.

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[1] The real estate that J & J used for its operations was owned by Jackson individually and rented to J & J. Jackson sold the real estate to D & D on December 7, 2001.

[2] D & D's answer to the garnishment stated that payments were being made only on the $20,000 promissory note. The status of the other promissory note is unclear from the record, but was not raised as an issue at trial.

[3] Marshall's counter-offer was actually rejected at a meeting of the Mid-State board of directors. Present at that meeting, however, were Jones, Jackson, and Jackson's son, who also constituted the board of directors for J & J.

On March 1, 2001, in the course of paying off its debts, Mid-State made a $60,000 payment to Jackson. The payment was in partial satisfaction of a $100,000 operating loan that Jackson had made to Mid-State in June 1993. The amortization schedule for Jackson's loan to Mid-State called for Mid-State to make regular monthly payments to Jackson in the amount of $836.62, with the last payment due on June 1, 2013. Mid-State's $60,000 payment to Jackson in March 2001 accelerated this amortization schedule. This left Mid-State still owing Jackson approximately $20,000 on the loan.

In August 2003, both J & J and Mid-State filed voluntary petitions for bankruptcy protection. In its bankruptcy pleadings, J & J listed two promissory notes from D & D as its only remaining property of any value, stating their current market values to be $17,929.08 and $1,861.10.[4] J & J listed Marshall as an unsecured creditor holding a nonpriority claim for $120,519. Marshall's claim was eventually referred back to the Rutherford County Circuit Court.

On March 11, 2004, after the bankruptcy petitions were filed, Marshall filed a lawsuit against Jackson and Jones individually in the Rutherford County Circuit Court. In the lawsuit, Marshall alleged that J & J and Mid-State were operated as alter egos of Jackson and Jones. Accordingly, he sought to disregard the corporate entities of both corporations and obtain recovery of his judgment from Jackson and Jones individually.

Discovery ensued. After discovery, Marshall gave up on seeking any recovery from Jones because Jones had filed for personal bankruptcy. The bench trial on Marshall's lawsuit against Jackson was held on June 4, 2007. The trial court heard testimony from Jackson, Jones, Marshall, and the accountant for both J & J and Mid-State.

At the outset of the trial, Jackson testified about his ownership of Mid-State and J & J stock. In 1992, Jackson said, he ceased participating in Mid-State's operations and sold all of his shares in Mid-State to a third party in order to care for his wife, who was seriously ill. In April 1995, he and the other shareholders of J & J sold all of their J & J shares to Mid-State. In July 1995, Jackson reacquired an interest in Mid-State by purchasing twenty-five percent of the outstanding voting shares. The majority shareholder in Mid-State at that time was Jackson's son, Dennis Keith Jackson, who held fifty percent of the Mid-State shares. Jackson never reacquired any shares in J & J.

Jackson also testified that Mid-State and J & J shared an attorney, who acted as outside counsel for both Mid-State and J & J for several years. Burtis Landers, an outside CPA, did financial statements and tax work for both J & J and Mid-State, and prepared Jackson's personal tax returns as well. Jackson said that J & J and Mid-State had separate in-house bookkeepers. Jackson also

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[4] Jones would later testify that these notes should have been listed as property on Mid-State's petition, not J & J's petition, because the notes had been assigned to Mid-State.

testified that Mid-State and J & J maintained separate bank accounts until J & J wound up its affairs.[5]

Jackson also testified about Mid-State's distributions to both Jackson and Jones, including the $60,000 payment made from Mid-State to Jackson in March 2001. Explaining why he received the $60,000 distribution ahead of the amortization schedule, Jackson testified that most of Mid-State's creditors had been paid, so he "asked for payment and . . . received the $60,000." Asked whether the Mid-State board of directors authorized the $60,000 payment, Jackson stated that the decision to make the payment was ratified by the board when it held its meeting in April 2003. Because Mid-State had not had a formal directors' meeting since October 1999, Jackson said that the April 2003 meeting was the first opportunity for Mid-State's board to authorize the $60,000 payment to him.

Jackson explained the four-year interim between Mid-State's 1999 board meeting and its next one in 2003 by saying that it was a busy time for the company, and that Jones, as president, was particularly busy contacting creditors and winding up Mid-State's affairs. He added that Jones was not working unilaterally, but was managing Mid-State's affairs under the auspices of the board.

Jones testified next, primarily discussing the transfer of assets out of J & J. Jones said that J & J assigned to Mid-State notes from D & D. This was done without consideration; J & J received nothing from Mid-State in return for the D & D notes. Jones said that the D & D notes were improperly included on J & J's list of assets in its bankruptcy petition; he stated that the D & D notes should have been put on Mid-State's list of assets because J & J had assigned those notes to Mid-State in August 2001.

Marshall testified briefly. He said that, apart from the two payments of $332.02 each, he had not been able to collect on his judgment against J & J.

Finally, the trial court heard testimony from the outside accountant for both Mid-State and J & J, Burtis Landers ("Landers"). Landers had functioned as the outside accountant for both corporations since 1975, and prepared financial statements and tax returns for both entities. During that time, Landers said, he also did accounting work for Jackson individually. He maintained that this arrangement was not unethical, and in fact was beneficial because it placed him in a better position to advise all of his clients.

Landers explained that J & J and Mid-State encountered financial difficulties because, in the early 1990s, new environmental regulations began to constrict the profits of small-volume gasoline suppliers and retailers. Suppliers such as J & J and Mid-State operated on a modest scale with low

[5]The common accountant for Mid-State and J & J later testified that, in August 2001, the contents of J & J's only remaining bank account after liquidation were transferred to Mid-State, along with the two promissory notes from D & D.

profit margins, and could not afford to upgrade their facilities to comply with the new regulations. Consequently, they eventually went out of business.

In his testimony on the liquidation of Mid-State and J & J, Landers commented that "every single bill of Jackson & Jones' was paid before they liquidated the corporation." When asked whether any of Mid-State's bills went unpaid because of its $60,000 payment to Jackson, Landers responded, "Not because [Jackson] received money. There were unpaid bills from Mid-State Oils at the end. [Jackson], himself, suffered a loss on a note that he could not repay himself." On cross examination, Landers said that he would normally disclose the existence of a pending lawsuit against his client, such as Marshall's lawsuit against J & J, but he prepared the last statement for J & J in May 1999, before the Court of Appeals' decision to reverse the trial court's dismissal of Marshall's claim and enter judgment in favor of Marshall.

At the conclusion of the evidence, the trial court issued an oral ruling. The court noted at the outset of its ruling that, in order for Marshall to recover from Jackson, he would have to prove that the corporate veils of both J & J and Mid-State should be pierced. In determining whether to pierce either, the court considered overall whether the corporate nature of either J & J or Mid-State had been used to work a fraud or injustice in contravention of public policy. It also considered the following factors: whether there was a failure to collect paid in capital; whether the corporations were grossly undercapitalized; whether either corporation had failed to issue stock certificates; whether either corporation was solely-owned by one individual; whether Jackson, J & J, and Mid-State used the same office or business location; whether the same employees or attorneys were used; whether the corporations were used as a conduit for another person or entity; whether corporate assets had been diverted to the detriment of creditors; whether the corporations had been used as a subterfuge for illegal transactions; whether either J & J or Mid-State were merely dummy corporations; and whether arm's length relationships had been maintained between Jackson and the two companies.

Regarding J & J, the trial court found that, although J & J paid its profits to Mid-State, there was no diversion of assets to Mid-State. The trial court also noted that the two corporations shared the same accountants, attorneys, and corporate officers, and that Mid-State was the sole owner of the J & J shares of stock. Regarding Mid-State, the trial court found that the only factor weighing in favor of piercing the corporate veil was that Jackson used the same accountant as Mid-State. Considering all of these factual findings, the trial court concluded that only J & J's corporate veil could be pierced. This left Mid-State's corporate form intact, and left Marshall unable to recover against Jackson individually. Consequently, the trial court dismissed Marshall's action against Jackson with prejudice. From this order, Marshall now appeals.

ISSUES ON APPEAL AND STANDARD OF REVIEW

On appeal, Marshall argues that Jackson, as a director and shareholder of Mid-State, controlled the subsidiary, J & J, and in particular controlled the transfer of J & J's assets to Mid-State, without consideration, while J & J was winding up. Consequently, Marshall contends, the corporate veil of Mid-State should be pierced and Jackson should be held personally liable to Marshall as a creditor of J & J. Marshall also contends that Jackson, as a director of J & J, should be held individually liable for J & J's debt to Marshall.

This case proceeded as a bench trial. Accordingly, we review the court's findings of fact *de novo* on the record with a presumption of correctness "unless the preponderance of the evidence is otherwise." Tenn. R. App. P. 13(d); ***Campbell v. Fla. Steel Corp.***, 919 S.W.2d 26, 35 (Tenn. 1996). We review the trial court's conclusions of law *de novo* on the record with no such presumption. ***Campbell***, 919 S.W.2d at 35.

ANALYSIS

We begin with the general presumption that a corporation is a distinct legal entity, separate from its shareholders, officers, directors, and affiliated corporations. ***See Boles v. Nat'l Dev. Co.***, 175 S.W.3d 226, 244 (Tenn. Ct. App. 2005); ***Muroll Gesellschaft M.B.H. v. Tennessee Tape, Inc.***, 908 S.W.2d 211, 213 (Tenn. Ct. App. 1995). Under appropriate circumstances, a court of equity may disregard the separate legal identity of the corporation; in such a case, the shareholders, as owners of the entity, are considered identical to the corporation and may be held individually responsible for corporate liabilities. ***Muroll***, 908 S.W.2d at 213. This disregard of the corporate entity is commonly referred to as "piercing the corporate veil." ***Boles***, 175 S.W.3d at 244. "The party wishing to pierce the corporate veil has the burden of presenting facts demonstrating that it is entitled to this equitable relief." ***Oceanics Schools, Inc. v. Barbour***, 112 S.W.3d 135, 140 (Tenn. Ct. App. 2003) (citing ***Schlater v. Haynie***, 833 S.W.2d 919, 925 (Tenn. Ct. App. 1991)).

To determine whether the circumstances warrant piercing the corporate veil, the fundamental question to be asked is whether the corporation is a sham or dummy, and whether the corporation's separate existence "has been used to work a fraud or injustice in contravention of public policy." ***Boles***, 175 S.W.3d at 245–46 (quoting ***Federal Deposit Ins. Corp. v. Allen***, 584 F. Supp. 386, 397 (E.D. Tenn. 1984)).[6] We look as well at these factors:

> (1) whether there was a failure to collect paid in capital; (2) whether the corporation was grossly undercapitalized; (3) the nonissuance of stock certificates; (4) the sole ownership of stock by one individual; (5) the use of the same office or business location; (6) the employment of the same employees or attorneys; (7) the use of the corporation as an instrumentality or business conduit for an individual or another corporation; (8) the diversion of corporate assets by or to a stockholder or other entity to the detriment of creditors, or the manipulation of assets and liabilities in another; (9) the use of the corporation as a subterfuge in illegal transactions; (10) the formation and use of the corporation to transfer to it the existing liability of another

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[6]We note that a party seeking to pierce the corporate veil need not show actual fraud, but can sufficiently prove this part of his case by showing that an "injustice" has occurred "in contravention of public policy." ***See Boles***, 175 S.W.3d at 236 n.1.

> person or entity; and (11) the failure to maintain arms length relationships among related entities.

Id. (quoting ***Allen***, 584 F. Supp. at 397, commonly referred to as the ***Allen*** factors). While a corporation's legal identity should be disregarded only with great caution, piercing the corporate veil may be appropriate "when the corporation is liable for a debt but is without funds due to some misconduct on the part of the officers and directors." ***Muroll***, 908 S.W.2d at 213 (citing ***Anderson v. Durbin***, 740 S.W.2d 417 (Tenn. Ct. App. 1987)).

Marshall contends that J & J was "controlled" by Jackson through his position on the boards of directors for both Mid-State and J & J, insinuating that this control amounted to improper corporate governance. The fact that Jackson simultaneously held directorships with both companies is relevant and noteworthy, but is not sufficient in and of itself to justify piercing Mid-State's corporate veil. It is well within the province of the board of directors to govern the major decisions of a corporation. ***See*** 18B AM. JUR. 2D *Corporations* §§ 1297–99 (2004). Thus, it is to be expected that Jackson, along with the other board members, would exercise control over both corporations. We must determine whether Jackson exercised this control improperly to advance his own interests to the detriment of Mid-State's creditors.

Marshall focuses on the transfer of J & J's surplus assets to Mid-State, the transaction that finally rendered J & J judgment proof. Marshall asserts that this transaction was a diversion of J & J's assets and is "most critical" to his position. He acknowledges that, although Jackson was a director of both J & J and Mid-State, he was not a shareholder of J & J at the time of this transfer. Marshall argues, nevertheless, that this diversion of J & J's assets is sufficient to hold Jackson personally liable by virtue of his position as a director of J & J and in his capacity as a shareholder and director of Mid-State.

We are mindful that, at the time J & J transferred its assets to Mid-State, Jackson was a director of J & J but not a shareholder. The purpose of piercing the corporate veil is to hold the owners of the corporation, *i.e.*, its shareholders, liable for the corporation's debts when equity so demands. ***See Boles***, 175 S.W.2d at 244; ***see also*** 18 AM. JUR. 2D *Corporations* § 47 (2004); 18 C.J.S. *Corporations* § 33 (Westlaw 2008). The imposition of liability on a director for a corporation's debt is a wholly different situation. Generally, the creditors of a corporation have no right of action against the directors of that corporation for mismanagement. ***Merriman v. Smith***, 599 S.W.2d 548, 552–53 (Tenn. Ct. App. 1979) (citing ***Hume v. Commercial Bank***, 77 Tenn. 728 (1882)). In ***Merriman***, we observed that the creditor of a corporation which has become insolvent must ground any cause of action against the directors of the corporation on either a statute or " 'some conduct which creates a privity of contract between them, or which results in a tortious injury to the creditor for which an action ex delicto will lie.' " ***Id.*** at 552 (quoting ***Hume***, 77 Tenn. at 747). Marshall points to no authority that would justify our holding Jackson liable in his capacity as a director of J & J.

The transfer of $75,243 in assets from J & J to Mid-State for no consideration was the impetus for the trial court's decision to pierce the corporate veil of J & J. However, the sole shareholder of J & J was Mid-State. Therefore, Jackson can be reached individually only by holding him responsible as a shareholder of Mid-State. Consequently, we look at whether the trial court erred in finding an insufficient basis for piercing the corporate veil of Mid-State to reach Jackson.

Marshall asserts that the $60,000 payment from Mid-State to Jackson in March 2001 constituted a diversion of Mid-State's assets and justified piercing Mid-State's corporate veil. The evidence introduced at trial showed that this payment was made in consideration of the loan that Jackson made to Mid-State in 1993. Although the payment was made ahead of the amortization schedule for the loan, there was no proof that early payment was prohibited by the loan agreement or was otherwise improper. Moreover, Jackson was unable to collect the full amount of the debt before Mid-State filed its bankruptcy petition. In addition, the payment to Jackson was made in March 2001, months before the transfer of J & J's assets to Mid-State. The payment to Jackson was made in the midst of Mid-State's efforts to pay off many of its creditors, so the payment to Jackson was not made to the detriment of all other creditors of Mid-State. Under all of these circumstances, the evidence does not preponderate against the trial court's finding that the payment by Mid-State to Jackson was not a diversion of Mid-State's assets.

The evidence likewise does not show that Mid-State was "grossly undercapitalized." ***See Boles***, 175 S.W.3d at 245–46 (***Allen*** factors). Mid-State was formed as a Tennessee corporation in 1946, and remained a profitable concern until the 1990s when environmental regulations effectively forced the company out of business. The failure of a previously successful company, which was adequately capitalized at its formation, and the resulting loss of capital is not sufficient to show that the company was grossly undercapitalized. ***See Greene v. Hill Home Dev. Inc.***, No. 03A01-9210-CH-00369, 1993 WL 17115, at *3 (Tenn. Ct. App. Jan. 28, 1993); ***see also J.L. Brock Builders, Inc. v. Dahlbeck***, 391 N.W.2d 110, 116 (Neb. 1986).

Similarly, there is no evidence to show that Mid-State did not issue stock certificates, that the stock was solely owned by one person, or that Jackson used Mid-State's business location as his office. ***See Boles***, 175 S.W.3d at 245–46 (***Allen*** factors).

Marshall rightly notes that Mid-State's outside accountant, Landers, also did accounting work for Jackson individually, and that this weighs in favor of piercing the corporate veil. This is not, however, a sufficient basis in and of itself for piercing the corporate veil of Mid-State. Although the same attorney simultaneously represented both Mid-State and J & J, the attorney did not represent Jackson in an individual capacity. J & J and Mid-State did not use the same in-house employees. ***See id.*** There was no proof at the trial that Mid-State engaged in illicit activities or transactions, or that the liabilities of Jackson or J & J or any other entity were improperly transferred to Mid-State. ***See id.*** (***Allen*** factors).

The remaining ***Allen*** factor listed in ***Boles*** is whether the corporation was used as an "instrumentality" or "business conduit" for an individual. To prove this factor, the plaintiff must show that the corporation was so thoroughly controlled by the party against whom liability is sought that justice and equity require that the corporation's separate existence be disregarded. We have previously stated:

> The control necessary to invoke what is sometimes called the 'instrumentality rule' is not mere majority or complete stock control but such domination of finances, policies and practices that the controlled corporation has . . . no separate mind, will or existence of its own and is but a business conduit for its principal.

Neese v. Fireman's Fund Ins. Co., 386 S.W.2d 918, 921 (Tenn. Ct. App. 1964) (quoting FLETCHER ON CORPORATIONS § 43 (1963)). This factor is most often applied in the case of one corporation that is controlled by another corporation. ***See id.***

The evidence adduced at trial indicates that Mid-State, until its demise, was a legitimate corporation with employees, shareholders, and clients. At all relevant times, Jackson held a twenty-five percent stake in Mid-State, not a majority share. The $60,000 payment from Mid-State to Jackson was the only questionable transaction by Mid-State to which Marshall can point. Accordingly, we find that the evidence in the record does not preponderate against the trial court's finding that Mid-State was not a "mere instrumentality" for Jackson's individual interests.

We finally address the issue of whether Mid-State was "used to work a fraud or injustice in contravention of public policy." ***See Boles***, 175 S.W.3d at 245–46. Marshall concedes that there was no showing of fraud, so we limit our discussion to whether Mid-State was employed to work an injustice in contravention of public policy. We acknowledge the wrong inherent in the fact that Marshall holds a legitimate, sizeable judgment debt that has gone wholly unsatisfied. But as courts from other jurisdictions have aptly noted, if an unsatisfied judgment were the only fact necessary to establish injustice, the corporate form would be disregarded in virtually every case. ***See, e.g., Sea-Land Services, Inc. v. Pepper Source***, 941 F.2d 519, 522–23 (7th Cir. 1991) (citing ***Van Dorn Co. v. Future Chem. & Oil Corp.***, 753 F.2d 565 (7th Cir. 1985)); ***see also Plumbers' Pension Fund v. A-Best Plumbing & Sewer, Inc.***, No. 88 C 3087, 1992 WL 59098, at *5 (N.D. Ill. Mar. 16, 1992).

In ***Sea-Land Services***, the Seventh Circuit recognized, "The prospect of an unsatisfied judgment looms in every veil-piercing action; why else would a plaintiff bring such an action? Thus, if an unsatisfied judgment is enough for the 'promote injustice' feature of the test, then *every* plaintiff will pass on that score." ***Sea-Land Services***, 941 F.2d. at 522–23. To find injustice sufficient to warrant piercing the corporate veil, the ***Sea-Land*** court stated, there had to be "some 'wrong' beyond a creditor's inability to collect." ***Id.*** at 524. As an example, it noted that courts will find that an injustice was promoted if preserving the corporate form would lead to, besides an unpaid creditor, unjust enrichment of shareholders or the sanction of a scheme to transfer assets out of a corporation to avoid liabilities. ***Id.***

Here, the evidence in the record shows little more than the fact that Marshall remained an unpaid creditor. This falls short of a showing that Mid-State's corporate form was used to promote injustice. Under all of these circumstances, we cannot conclude that the trial court erred in declining to permit Marshall to pierce Mid-State's corporate veil and hold Jackson individually liable for the debt to Marshall.

The decision of the trial court is affirmed. Costs on appeal are taxed to Appellant Fred Marshall, and his surety, for which execution may issue if necessary.

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HOLLY M. KIRBY, JUDGE